

**Internal Revenue Service
Appeals**

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Date: November 5, 2009

Uniform Issue List

501.03-00

Department of the Treasury

Address any reply to:

Employer Identification Number:

Form Number:

990-PF

Person to Contact:

Contact Telephone Number:

Fax Number:

**Last Day to File a Petition with the United States
Tax Court**

FEB 03 2010

Certified Mail

Dear :

This is our final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code ("Code"). Your tax-exempt status is revoked as of January 1, 20XX.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia must be filed within 92 days from the date this determination was mailed to you. Contact the Clerk of the appropriate court for rules for filing petitions for declaratory judgment.

Our adverse determination is because:

1. **** is not operated exclusively for an exempt purpose as required by IRC section 501(c)(3).
2. The net earnings of **** inure to the benefit of a private shareholder or individual.
3. **** is operated for a substantial private purpose because it is operated for the benefit of private, rather than public, interests.

**** was formed in 20XX and was granted section 501(c)(3) status in March 20XX. The organization did not provide any financial documents. The organization's sole claimed charitable activities were a \$**** distribution to a college student and some support to reading programs. In 20XX, ****, a trustee, made a withdrawal of \$***** from her personal retirement account and deposited the funds into the foundation's bank account. These funds were used to fund a business that she owns.

The 30-day letter proposing revocation was issued on May 5, 20XX, and the organization protested.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on Form 1120 for any years, which are still open under the statute of limitations. Based on the information you furnished, it appears that returns should be filed beginning with the year ending December 31, 20XX. You should file any returns due for these years or later years with the Internal Revenue Service Center, Cincinnati, OH 45999. Processing of income tax returns will not be delayed because you have filed a petition for a declaratory judgment under Code section 7428.

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have questions about this letter, you may write to or call the contact person whose name, telephone number, and IRS address are shown on the first page of this letter. If you write, please include your telephone number, the best time for us to call you if we need more information, and a copy of this letter to help us identify your account. Keep the original letter for your records. If you prefer to call and the telephone number is outside your local calling area, there will be a long distance charge to you.

The contact person identified on the front of this letter can access your tax information and help you get answers. You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate for the IRS office that issued this notice of deficiency by calling **** or writing to ****. Taxpayer Advocate assistance is not a substitute for established IRS procedures such as the formal appeals process. The Taxpayer Advocate is not able to reverse legally correct tax determinations, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

Sincerely yours,

/s/
Appeals Team Manager



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

Legend

ORG= Name of organization

x=Date

X= Year

ORG

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

December x, 200X

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December x, 200X

Legend

ORG= Name of organization

x= Amount

NN= Name of individual

X= Year

CY= City

Issue:

Should revocation of exemption under IRC Section 501(c) (3) be proposed?

Facts:

The above-named organization was granted exemption as a private non-operating foundation described in IRC Section 501(c) (3) in March 200X.

During the examination, NN, a trustee, was unable to produce the organization's financial records. However, NN stated that she made a withdrawal of \$x from her personal retirement account and deposited the funds into the foundation's bank account. She stated that these funds were used to fund a business that she owns.

Applicable Law:

IRC Section 501(c)(3) provides tax exemption for corporations and foundations that are operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that in order to be exempt as an organization described in IRC Section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treasury Regulation Section 1.501(c)(3)-1(c)(1) states that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treasury Regulation Section 1.501(c)(3)-1(c)(2) states an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit or private shareholders or individuals.

Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated exclusively for one or more of the purposes specified in IRC Section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended December x, 200X

private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Government's Position:

The organization has failed to meet the operational test described in Treasury Regulation Section 1.501(c)(3)-1(c)(1).

All of the organization's expenditures were personal in nature. These expenditures were paid to a business owned by trustee NN, who is a disqualified person with respect to the foundation.

As stated in Treasury Regulation Section 1.501(c)(3)-1(c)(1), "an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3)." Since the organization's expenditures were for personal purposes, the organization is clearly not engaging primarily in activities that accomplish exempt purposes under IRC Section 501(c)(3).

Further, as indicated in Treasury Regulation Section 1.501(c)(3)-1(c)(2), the organization is not operated exclusively for exempt purposes, because a substantial percentage of its net earnings are inuring to disqualified persons.

The organization is also being operated for private rather than public interests due to the expenditures for personal purposes. As stated in Treasury Regulation Section 1.501(c)(3)-1(d)(1)(ii), an organization is not operated for exempt purposes if it is being operated for private interests.

Based on the above precedent, the organization's exemption under IRC Section 501(c)(3) should be revoked.

Taxpayer's Position:

The taxpayer's representative, NN, submitted a protest letter on June x, 200X. In this letter, he stated that NN "erroneously believed that the private foundation could be used to manage, as a trustee or custodian, a pension rollover that she was receiving upon separation from the CY. The money was placed into the foundation. The individual taxpayer (NN) then drew on the funds, as if she owned them, which, under the circumstances, she did."

The letter further states that NN did not intend to transfer ownership of the funds to the private foundation and that the taxpayer did not claim a charitable donation for the funds. The representative agrees that the manner in which the IRA withdrawal was conducted was incorrect and that the funds should have been claimed as income by NN. However, he stated that "because the private foundation never owned the rolled over amounts, even though the money was in the private foundation's bank account, and because there was no donative intent, there was no self dealing and the private foundation's funds were not used."

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended December x, 200X

However, it is the IRS position that, once funds are donated into an account held by a private foundation, those funds must be used for IRC Section 501(c)(3) purposes and any misuse of the funds may cause loss of the foundation's tax exemption as well as assessment of Chapter 42 excise taxes.

Conclusion:

Since the organization does not meet the operational test under IRC Section 501(c)(3), we are proposing that its tax exemption be revoked.